UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re: Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation **This document pertains to:** *City of New York, et al. v. Amerada Hess Corp., et al.*, Case No. 04-CIV-3417	Master File No. 1:00-1898 MDL 1358 (SAS) M21-88

DEFENDANT EXXON MOBIL CORPORATION'S RULE 56.1 STATEMENT IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT OF PLAINTIFF CITY OF NEW YORK'S CLAIMS RELATED TO STATION 6 BASED ON THE STATUTE OF LIMITATIONS

Pursuant to Local Rule 56.1, and in support of its Motion for Summary Judgment on Plaintiff's claims related to Station 6, Defendant Exxon Mobil Corporation submits this statement of material facts as to which there is no genuine issue to be tried:

1. Plaintiff's Fourth Amended Complaint served March 9, 2007 asserts that "wells in the City's groundwater well system in the Affected Area are imminently at risk of drawing at any moment groundwater contaminated by MTBE" and that "removing MTBE from groundwater is far more difficult and expensive than removing gasoline or other contaminants associated with gasoline." *4th Am. Compl.* ¶¶ 2, 72.

2. On February 10, 2009, Plaintiff served the Expert Report of Donald K. Cohen, CPG, and Marnie A. Bell, P.E., of Malcolm Pirnie, Inc (hereinafter "Cohen and Bell" Report). *Declaration of James A. Pardo* ("*Pardo Decl.*"), Exhibit ["Ex."] 1.

3. The Cohen and Bell report outlines the opinions of Plaintiff's experts on a proposed "design basis for providing MTBE treatment at the Station 6 Demonstration Plant." Pardo Decl., Ex. 1 at § 9.3.3.

4. The Cohen and Bell report notes the "Challenges Associated with MTBE Removal" and it states that "Although air stripping installations have been shown to be successful for the removal of MTBE from water when the concentrations are less than 1000 µg/L, the air handling requirements are often significant (as compared to removal of other volatile organic compounds) resulting in increased space requirements, operational complexity, and capital costs." It also states that "air stripping requires a larger air-to-water ratio (often greater than 100:1) for MTBE applications in comparison to other VOCs, such as tetrachloroethylene (PCE), which typically only requires an air-to-water ratio of 40:1 in packed bed applications". *Pardo Decl.*, Ex. 1 at § 9.3.2, pp. 9-3 to 9-4.

5. The Cohen and Bell report outlines opinions on "Air Stripping Design Criteria" in Table 9-3 wherein four or five air stripping towers twelve feet in diameter are proposed with maximum air to water ratios ranging from 110:1 to 220:1 to remove MTBE from water at the Station 6 plant to finished concentrations for drinking water of less than 3 ppb. *Pardo Decl.*, Ex. 1 at Table 9-3, p. 9-14.

6. In September 1999, the City of New York's consultant Malcolm Pirnie issued a Technical Memorandum titled "Brooklyn-Queens Aquifer Project – Station 6 Modifications" for the City of New York (hereinafter "September 1999 Technical Memorandum"). *Pardo Decl.*, Ex. 2 (MP 00012081-MP 00012100).

7. The September 1999 Technical Memorandum states that "[b]eyond the contaminants that have been detected in the Station 6 wells, there are other pollutants of concern that have been found in the aquifer in other areas. These other contaminants may be present in the raw water when the wells are pumped over the long term." *Pardo Decl.*, Ex. 2 at MP 00012086.

8. The September 1999 Technical Memorandum also states that "[t]he presence of methyl-tertiarybutyl-ether (MTBE) is a widespread concern" and that "[c]onsidering that numerous potential sources of MTBE exist within 1 mile of Station 6, the need to treat for MTBE should be anticipated, particularly in conjunction with the high concentrations of PCE reported nearby." *Id.*

9. The September 1999 Technical Memorandum further states that these "volatile organic compounds will be removed through the use of packed column air strippers" and that "[a] two-stage system is envisioned: a low air-water ratio (40:1) for the first pass and then a high air-water ratio (150:1) through the second tower to remove the more soluble organics such as MTBE." *Pardo Decl.*, Ex. 2 at MP 00012089.

10. The September 1999 Technical Memorandum also notes that "[t]he presence of highly soluble VOCs such as MTBE will greatly impact the design of the air strippers, as they require much higher air to water ratios for removal (150:1 vs. 40:1)." *Id.*

11. The September 1999 Technical Memorandum states that "[f]our 12-foot diameter packed air column strippers will be used to treat the groundwater for VOC removal. Air-water ratios will depend on the stage of their air-stripping process: the first stage (two towers) is expected to have an air-water ratio of 40:1 to remove the more 'strippable' VOCs, while a second phase of air strippers (two additional towers) will have a much higher air-water ratio (150:1) to remove the much less strippable VOCs, such as MTBE, that are not removed by the first stage." *Pardo Decl.*, Ex. 2 at MP 00012093.

12. In May 2000, the City of New York's consultant Malcolm Pirnie issued a paper for the City of New York called "Brooklyn Queens Aquifer Study, Station 6 Restoration Project,

Impact of Two Contamination Sites, Issues Paper" (hereinafter "May 2000 Issues Paper"). *Pardo Decl.*, Ex. 3 (MP 00024828-MP 00024840).

13. The May 2000 Issues Paper states that "[a] part of the Brooklyn Queens Aquifer study, the conceptual, preliminary and final design for rehabilitation of the Station 6 wells and treatment plant, located in Jamaica Queens, are being prepared." *Id.* at MP 00024828.

14. The May 2000 Issues Paper notes that "[t]he need to treat the groundwater for VOCs (including MTBE) was anticipated in the conceptual design" and that "[w]e have planned for treatment of VOCs and MTBE at Station 6." *Id.* at MP 00024829.

15. The May 2000 Issues Paper also notes in a section titled "Opportunities" that "[i]n return for assisting the NYSDEC with their cleanup activities, the DEP could receive financial assistance directly from the NYSDEC, from the State Spill Fund, or from the Responsible Parties." *Id.* at MP 00024831.

16. MTBE was first detected in raw water drawn from Well 6D on April 18, 2000 at a concentration of 1.5 micrograms per liter. *Proposed Joint Pretrial Order for Phase II,* ¶ 108.

17. MTBE was first detected in raw water drawn from Well 33 on April 18, 2000 at a concentration of 0.73 micrograms per liter. *Proposed Joint Pretrial Order for Phase II,* ¶ 111.

July 8, 2009
New York, New York

Respectfully submitted,

Peter John Sacripanti (PS 8968)
James A. Pardo (JP 9018)
McDermott Will & Emery LLP
340 Madison Avenue
New York, NY 10017-4613
Tel. (212) 547-5400
Fax 212) 547-5444